IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 2599 of 2002

BHANWAR SINGH
V/S
STATE & ORS

HON'BLE SHRI R P VYAS,J.

Mr. NR Chaudhary, for the petitioner.
Mrs. R.R. Kanwar, for the respondents.

Date of Order : 09.2.2005

ORDER

The instant petition has been filed by the petitioner claiming relief therein that the respondents may be directed to extend benefit of the encashment of privilege leave to him alongwith interest @ 12% of the delayed payment of unutilised privilege leave from the date of his retirement.

Glaring facts giving rise to the instant petition are that the petitioner was appointed vide order dated 7.7.1967 on the post of constable. Thereafter, vide order dated 13.3.1975, he was promoted to the post of Head Constable by the respondent department. Then, vide order dated 1.10.1983, he was promoted to the post of Asstt. Sub Inspector and later on he was also promoted to the post of Sub Inspector.

Thereafter, the Dy. Inspector General of Police vide order dated 23.12.2000, while exercising the powers conferred by Rule 53(1) of Rajasthan Civil Services (Pension) Rules, 1996 (hereinafter referred to as "the Rules of 1996"), on completion of 25 years of qualifying service, compulsorily retired the petitioner from service w.e.f. 31.12.2000.

The grievance raised by the petitioner in the instant writ petition is that after the retirement from services, he was paid retiral benefits by the respondents, but did not pay benefit of the encashment of privilege leave to him. Being aggrieved by the denial of benefit of the encashment of privilege leave, the petitioner submitted a representation to the respondents, requesting therein that he is entitled to the benefit of encashment of leave and the same may be extended to him. It is argued by the learned counsel for the petitioner, that the respondents have not been extended benefit of encashment of privilege leave till date and did not pay any head to the representation, hence this writ petition.

It is submitted by the learned counsel for the petitioner that a Government Servant on retirement

from services under Rule 91-B of Rajasthan Service Rules, 1951 (hereinafter referred to as "the Rules of 1951") is entitled to cash payment in lieu of his unutilised privilege leave on the date of retirement. As such, the petitioner is fully entitled to the cash payment of unutilised privilege leave at his credit on the date of retirement. It is further argued by the learned counsel for the petitioner that no distinction can be made in the Government Servant who retired from service on achieving the age of superannuation and the Government Servant who are compulsory retired from service rules. The compulsory retirement is not a punishment whether on attaining the age of superannuation or by way of compulsory retirement.

Controverting these submissions, learned counsel appearing for the respondents submits that the State Government, Department of Finance (Rules Division) vide its Notification dated 20.8.2001 (Annexure R/1) by which some amendment was made in Rajasthan Service Rules, 1951 and named as Rajasthan Service (Amendment) Rules, 2001 (hereinafter referred to as "the Rules of 2001). Rule 91-B(1) which was substituted as under:

> "A Government servant on retirement from service on superannuation, invalid, compensation pension or

> retirement pension under rule 50 and 53 of Rajasthan Civil Services (Pension) Rules, 1996 shall be paid cash equivalent to leave salary in respect of the period of unutilised privilege leave not exceeding 300 days at his/her credit at the time of retirement.
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> Note:- The benefit under this sub-rule shall not be admissible to the Government Servants retired compulsorily as a measure of penalty under the Rajasthan Civil Services (CCA) Rules, 1958".

Relying upon the aforesaid Rule, it was submitted by the learned counsel for the respondents that it is clear that if compulsory retirement is made as a measure of penalty under the Rajasthan Civil Services (CCA) Rules, 1958, then benefit under the sub-rule is not admissible to the petitioner.

It is further argued by the learned counsel for the respondents that the service career of the petitioner was not up to the mark and during the period from 2.5.1990 to 4.4.2000, the petitioner was punished 21 times for various mis-conducts under Rule 17 of the Rules of 1958. It is thus clear that compulsory retirement of the petitioner was made in public interest. Thus, it is clear that the petitioner was made compulsorily retired as a measure of various penalties imposed on him under the Rules of 1958 and, therefore, the petitioner is not entitled to

get the benefit under Rule 91-(B)(1) of the Rules of 1951 as amended vide Amendment Rules, 2001.

I have heard rival contentions argued by the learned counsel for the parties and scanned the entire record and also examined the relevant rules.

It is admitted position on record that the petitioner was compulsorily retired from the services in order to normal course rather than by way of penalty. The petitioner was compulsorily retired while assigning the provisions of Rule 53(1) of the Rules of 1996. I have also gone through the provisions of Rule 91-B(1) on the basis of which a stand has been taken by the respondents that the petitioner is not entitled to get the benefit of encashment of privilege leave. But this contention is not sustainable in view of the provisions laid down in Rule 53(1) as well as the amended provisions in Rule 91-B(1) of the Rules.

Heard learned counsel for the parties.

Admittedly, the petitioner was retired under Rule 53(1) of the Rajasthan Civil Services (Pension) Rules, 1996 (Old Rule 244(2) of the Rajasthan Service Rules, 1951), in public interest. Therefore, the

"Note" appended below Rule 91-B(1) of the Rajasthan Service (Amendment) Rules, 2001, shall not be applicable in the case of the petitioner, as he has been compulsorily retired by the Department from service in the "normal course of nature" and not "as a measure of penalty" under the Rajasthan Civil Services (Classification, Control and Appeals) Rules, 1958. In this view of the matter, it is amply clear that he will be entitled to be paid cash equivalent to leave salary in respect of the period of unutilised privilege leave in accordance with the Rules.

In view of the aforesaid discussions, I am of the view that the petitioner is entitled to get the benefit of enchashement of privilege leave as he was retired under the provisions of Rule 53(1) of the Rules of 1996 in normal course, instead of by way of punishments imposed upon the petition under Rule 91-B (1) of the Amended Pension Rules, 2001 and this Note is not applicable to the petitioner, as the petitioner was not compulsorily retired by way of punishments under the CCA Rules of 1958.

The net out come of the aforesaid discussion is that the writ petition is allowed and the respondents are directed to make the payment of encashment of privilege leave to the petitioner under

the provisions of Rule 91-B(1), without taking into consideration the "Note" appended below the Rules of 1996, within a period of two months from the date of receipt of a certified copy of this order.

In case, the payment is not made within a period of two months, the petitioner shall be entitled to get interest @ 12% per annum.

No order as to costs.

(R P VYAS),J.

/Anil/